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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,670	06/24/2003	John Baranowski	016354.0204	8445

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EXAMINER

NOLAND, KENNETH W

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,670

Applicant(s)

BARANOWSKI, JOHN

Examiner

Kenneth W Noland

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-11, 13-17, 19 and 21-30 is/are rejected.
- 7) ☒ Claim(s) 7, 8 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01-15-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3653

1. Applicant's remarks filed on 03-31-2005 have been fully considered regarding the restriction requirement and they are deemed persuasive, As such, the restriction has been withdrawn and an action on all the claims is set forth as follows:

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 17 recites the limitation ""said control unit"" in **line 7*. There is insufficient antecedent basis for this limitation in the claim. Should not this be --a control unit--? Correction is required and if corrected, then claim 17 would be considered allowed if rewritten in independent form.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6,10,11,13-16,21-24,26-28 are rejected under 35 U.S.C. 102(**b*) as being *anticipated** by *Archer et al. Archer et al discloses both the method and the apparatus for dispensing having a dispenser having a feeder bowl (hopper) 11 and a vibratory dispenser 17 having a plurality of dispensing paths 21 (figure 1). Note also a sensing means (inspection system 3)*for measuring a physical characteristic of the item and in col 2 ,lines 23-24 the proper number of articles. Note in column 8 a tablet diverter system 5 utilizing a dispensing 'head', as shown in figure 8, having chambers directing the articles to container chutes (47,45),as when the measured articles are

Art Unit: 3653

within a predetermined value. Note the chambers directing the articles to diversion chute (39) , as when the measured articles are not within a predetermined value. Note the 'door' members 65',63' and a bifurcation device 67'. Note in figures 9 and 10 the star wheel having 'grooves' 127 to receive containers. Note also the 'apertures' 123,125 to coincide with the container chutes 47,45 to fill the containers. Note also the control system in column 11 to control the entire operation the apparatus.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Archer et al in view of Thomas. To provide that Archer et al's measuring or inspection system would provide for the measuring of the density, weight or volume of the article, would be obvious in view of the teachings of Thomas' use of another sorter which discloses in the abstract a monitor or measuring device to sense or monitor density, weight or the size (volume) of an article so as to provide for a variety of characteristic of the article to sort by.*

7. Claims 15,19,22 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Archer et al in view of McGrath,Jr et al. In regard to claims 19 and 30, to modify Archer et al's rejection bin ,for the rejected articles, for buckets ,would be

Art Unit: 3653

obvious in view of the teachings of McGrath, Jr et al's use of the bucket used for waste in column 4 lines 38-40 so as to provide an alternate container for the rejected articles. In regard to claims 15 and 22, to provide that Archer et al's system utilize a conveyor for the rejected articles, would be obvious as such conveyors are frequently used in material handling, and therefore, this conventional handling expedience is not afforded any patentable weight..

8. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Fridge in view of Archer et al . Fridge discloses the apparatus effect the method of dispensing items from a rotary dispenser 32 having a vibratory feeder part 18. The items are measured at the test block 22 and if the items are within a preselected value, the items are directed through the chute 24, and if not, they are directed through the chute 26 to a container. To provide that Fridge's rejected items would be sent to a bin and the accepted items sent to containers, would be obvious in view of the teachings of Archer et al's use of the rejection bin (col 9, lines 17-18) and the containers (bottles) to receive the accepted items to provide for the containment of rejected of accepted items within chosen receptacles..

9. Claims 7,8,12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 18 and 20 are allowed.

Art Unit: 3653

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth W Noland whose telephone number is (571) 272-6941. The examiner can normally be reached on Monday-Thursday ,each week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on (703) 306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KENNETH W. NOLAND
PRIMARY EXAMINER